

37 Am. Jur. 2d Fraud and Deceit § 63

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Fraud and Deceit

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IV. False Representations

B. Necessity that Representation Be of Fact; Opinions

1. In General

§ 63. Generally

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West's Key Number Digest

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As a general rule, in order to constitute actionable fraud, a false representation must relate to a past¹ or present² (sometimes referred to as “existing”³ or “preexisting”)⁴ material⁵ fact.⁶ A representation that relates to future conduct is generally not actionable.⁷ However, a promise to do an act in the future, when coupled with a present intent not to fulfill the promise, has been recognized as an exception to the general rule that a misrepresentation must relate to an existing or past fact.⁸

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Footnotes

¹ Trooien v. Mansour, 608 F.3d 1020 (8th Cir. 2010) (applying Minnesota law); National Union Fire Ins. Co. of Pittsburgh, PA v. Cambridge Integrated Services Group, Inc., 171 Cal. App. 4th 35, 89 Cal. Rptr. 3d 473 (1st Dist. 2009); Clinton County ex rel. Bd. of Com'rs of County of Clinton v. Clements, 945 N.E.2d 721 (Ind. Ct. App. 2011), transfer denied, 962 N.E.2d 643 (Ind. 2011); Flegles, Inc. v. TruServ Corp., 289 S.W.3d 544 (Ky. 2009); Kurtzenacker v. Davis Surveying, Inc., 2012 MT 105, 365 Mont. 71, 278 P.3d 1002 (2012); Italian Cowboy Partners, Ltd. v. Prudential Ins. Co. of America, 341 S.W.3d 323 (Tex. 2011).

² Trooien v. Mansour, 608 F.3d 1020 (8th Cir. 2010) (applying Minnesota law); Clinton County ex rel. Bd. of Com'rs of County of Clinton v. Clements, 945 N.E.2d 721 (Ind. Ct. App. 2011), transfer denied, 962 N.E.2d 643 (Ind. 2011); Flegles, Inc. v. TruServ Corp., 289 S.W.3d 544 (Ky. 2009); Italian Cowboy Partners, Ltd. v. Prudential Ins. Co. of America, 341 S.W.3d 323 (Tex. 2011).

³ Petrohawk Properties, L.P. v. Chesapeake Louisiana, L.P., 689 F.3d 380 (5th Cir. 2012) (applying Louisiana law); Bennett v. MIS Corp., 607 F.3d 1076 (6th Cir. 2010) (applying Michigan law); National Union Fire Ins. Co. of Pittsburgh, PA v. Cambridge Integrated Services Group, Inc., 171 Cal. App. 4th 35, 89 Cal. Rptr. 3d 473 (1st Dist. 2009); Clinton County ex rel. Bd. of Com'rs of County of Clinton v. Clements, 945 N.E.2d 721 (Ind. Ct. App. 2011), transfer denied, 962 N.E.2d 643 (Ind. 2011); Valspar Refinish, Inc. v. Gaylord's, Inc., 764 N.W.2d 359, 68 U.C.C.

Rep. Serv. 2d 567 (Minn. 2009); Kurtzenacker v. Davis Surveying, Inc., 2012 MT 105, 365 Mont. 71, 278 P.3d 1002 (2012); Flandera v. AFA America, Inc., 78 A.D.3d 1639, 913 N.Y.S.2d 441 (4th Dep't 2010); Sales v. Kecoughtan Housing Co., Ltd., 279 Va. 475, 690 S.E.2d 91 (2010).

⁴ Pearson v. Garrett-Evangelical Theological Seminary, Inc., 790 F. Supp. 2d 759, 272 Ed. Law Rep. 947 (N.D. Ill. 2011) (applying Illinois law); Supervalu, Inc. v. Johnson, 276 Va. 356, 666 S.E.2d 335 (2008).

⁵ Republic Bank & Trust Co. v. Bear Stearns & Co., Inc., 683 F.3d 239 (6th Cir. 2012) (applying Kentucky law); Trooien v. Mansour, 608 F.3d 1020 (8th Cir. 2010) (applying Minnesota law); Lawson v. Harris Culinary Enterprises, LLC, 83 So. 3d 483 (Ala. 2011); National Union Fire Ins. Co. of Pittsburgh, PA v. Cambridge Integrated Services Group, Inc., 171 Cal. App. 4th 35, 89 Cal. Rptr. 3d 473 (1st Dist. 2009); Clinton County ex rel. Bd. of Com'rs of County of Clinton v. Clements, 945 N.E.2d 721 (Ind. Ct. App. 2011), *transfer denied*, 962 N.E.2d 643 (Ind. 2011); Kurtzenacker v. Davis Surveying, Inc., 2012 MT 105, 365 Mont. 71, 278 P.3d 1002 (2012).

⁶ Republic Bank & Trust Co. v. Bear Stearns & Co., Inc., 683 F.3d 239 (6th Cir. 2012) (applying Kentucky law); Trooien v. Mansour, 608 F.3d 1020 (8th Cir. 2010) (applying Minnesota law); Lawson v. Harris Culinary Enterprises, LLC, 83 So. 3d 483 (Ala. 2011); National Union Fire Ins. Co. of Pittsburgh, PA v. Cambridge Integrated Services Group, Inc., 171 Cal. App. 4th 35, 89 Cal. Rptr. 3d 473 (1st Dist. 2009); American United Life Ins. Co. v. Douglas, 808 N.E.2d 690 (Ind. Ct. App. 2004).

⁷ §§ 84, 85, 86.

⁸ § 94.

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